



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2020-0466; FRL-9004-02-R2]

#### Approval of Air Quality Implementation Plans; New York; Part 212, Process Operations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) concerning process operations. The effect of this revision is to streamline and update provisions, align those provisions with permitting regulations, and provide regulatory certainty for the regulated community.

**DATES:** This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2020-0466. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Ferreira, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3127, or by email at [ferreira.nicholas@epa.gov](mailto:ferreira.nicholas@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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### **I. What is the background for this action?**

On July 1, 2021 (86 FR 35042), the EPA published a notice of proposed rulemaking that proposed to approve a revision to the State Implementation Plan (SIP) submitted by the State of New York on February 5, 2019, and supplemented on March 25, 2021, for purposes of revising Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Part 212, “General Process Emission Sources.” The EPA is also approving attendant revisions to Part 200, “General Provisions,” Subpart 200.1, “Definitions.”

The revisions to Part 212, which is now entitled, “Process Operations,” apply to process emission sources and/or emission points associated with a process operation. The changes to Part 212 include establishing consistent terminology between Part 212, Part 200, and Part 201, “Permits and Registrations”; establishing a Toxic Best Available Control Technology (T-BACT) standard for toxic air contaminants; clarifying the interaction between Part 212 and the National Emission Standards for Hazardous Air Pollutants (NESHAPs); offering a streamlined approach for demonstrating compliance with regulatory standards for air contaminants by adopting a mass emission rate option; replacing the current Part 212 control requirement, which provides the New York State Department of Environmental Conservation (NYSDEC) Commissioner with discretion to establish the degree of required air cleaning upon performance of air dispersion modeling analyses in order to demonstrate compliance with the NYSDEC Guideline

Concentrations or National Ambient Air Quality Standards (NAAQS); controlling High Toxicity Air Contaminants (HTACs) to the greatest extent possible; and generally reorganizing and clarifying Part 212. These revisions streamline and update provisions, align those provisions with permitting regulations, and provide regulatory certainty for the regulated community.

New York's March 25, 2021 comprehensive supplemental submittal also included Part 201 Operating Permit Program requirements; however, the EPA will be acting on these revisions under a separate action.

The specific details of New York's SIP submittals and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's July 1, 2021 proposed rulemaking. *See* 86 FR 35042.

## **II. What comments were received in response to the EPA's proposed action?**

The EPA did not receive any comments on the July 1, 2021 proposed approval of Title 6 of the New York Codes, Rules and Regulations, Part 212, "Process Operations" and Part 200, "General Provisions," Subpart 200.1, "Definitions."

## **III. What action is the EPA taking?**

The EPA is approving the revisions to the State Implementation Plan (SIP) submitted by the State of New York on February 5, 2019, and supplemented on March 25, 2021, for purposes of revising Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Part 212, "Process Operations". The EPA is also approving attendant revisions to Part 200, "General Provisions," Subpart 200.1, "Definitions."

#### **IV. Incorporation by reference.**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of 6 NYCRR Part 212, “Process Operations” and Part 200, “General Provisions,” Subpart 200.1, “Definitions,” as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the New York State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

#### **V. Statutory and Executive order reviews.**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law that meets Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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<sup>1</sup> See 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Clean Air Act section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

September 27, 2021.

Dated:

Walter Mugdan,  
Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart HH—New York**

- a. In § 52.1670, in the table in paragraph (c), revise the entries “Title 6, Part 200, Subpart 200.1” and “Title 6, Part 212” to read as follows:

#### **§ 52.1670 Identification of plan.**

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(c) \* \* \*

### **EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Comments</b>
Title 6, Part 200, Subpart 200.1	General Provisions, Definitions	2/25/2021	[insert date of publication in the Federal Register]	<ul style="list-style-type: none"><li>• EPA is approving definitions that are not already federally enforceable.</li><li>• EPA approval finalized at [insert Federal Register citation].</li></ul>
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Title 6, Part 212	Process Operations	2/25/2021	[insert date of publication in the Federal Register]	<ul style="list-style-type: none"><li>• EPA approval finalized at [insert Federal Register citation].</li></ul>
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[FR Doc. 2021-21370 Filed: 9/30/2021 8:45 am; Publication Date: 10/1/2021]